

**New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau**

TSB-A-89 (2)S
Sales Tax
January 17, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880722A

On July 22, 1988, a Petition for Advisory Opinion was received from United Radio, Inc., 2949 Erie Boulevard East, Syracuse, New York 13224.

Petitioner raises the following two issues:

1. Whether the purchase of equipment by Petitioner's automotive department qualifies for the exemption provided under Section 1115(a)(12) of the Tax Law when such equipment is used to repair "defective" or "damaged" units which have been returned by retail customers for replacement with new units in accordance with a manufacturer's warranty and which "defective" or "damaged" units upon being repaired are forwarded to the manufacturer for the purpose of being resold.
2. Whether the purchase of equipment by Petitioner's consumer department qualifies for the exemption provided under Section 1115(a)(12) of the Tax Law when such equipment is used to repair "defective" or "damaged" parts or components taken from items which retail customers have brought in for the purpose of being repaired in accordance with a manufacturer's warranty and which "defective" or "damaged" parts or components upon being repaired are forwarded to the manufacturer for the purpose of being resold.

Petitioner provides electronic repair services for over 1500 dealers. A significant portion of Petitioner's business consist of warranty work for manufacturers. Petitioner currently has contracts with more than 35 manufacturers. Petitioner acts as agent for the manufacturer and "re-manufacturers" new equipment, and parts or components of new equipment, which are under warranty. This work is performed by Petitioner's automotive department and consumer department. Petitioner maintains that it takes the place of the manufacturer.

Petitioner's automotive department maintains an inventory of new units on consignment from the manufacturer. When a consumer brings in a vehicle with a damaged or defective unit which is to be replaced in accordance with the terms of the manufacturer's warranty, Petitioner removes the damaged or defective unit from the vehicle and installs a new unit from inventory.

The defective unit is repaired or reconditioned by Petitioner and then shipped to the manufacturer for the purpose of being resold as a repaired, reconditioned or remanufactured unit.

Petitioner's consumer department maintains an inventory of replacement parts and components for home electronic products. When a customer brings in an item which is to be repaired in accordance with the terms of the manufacturer's warranty, Petitioner removes the damaged or defective part or component and inserts a new part or component into the item.

The repaired item is then returned to the customer.

Petitioner then repairs the damaged or defective part or component, if possible, and, ships, it to the manufacturer, for the purpose of being resold.

Petitioner contends that inasmuch as its automotive and consumer departments act as agent for the manufacturer when repairing or "re-manufacturing" the damaged or defective units, parts or components which will be resold by the manufacturer, Petitioner's purchases of equipment for use in repairing or "re-manufacturing" such items qualify for the sales tax exemption provided under Section 1115(a)(12) of the Tax Law. It is also Petitioner's contention that the exemption would be granted to the manufacturer if the manufacturer was repairing or "re-manufacturing" such items.

Section 1105(a) of the Tax Law imposes sales tax on "the receipts from every retail sale of tangible personal property "

Section 1110 of the Tax Law imposes a use tax on the use within the state "of any tangible personal property purchased at retail" upon which the sales tax has not been paid.

Section 1115(a)(12) of the Tax Law exempts from the tax on retail sales imposed under section 1105(a), "[m]achinery or equipment for use or consumption directly and predominantly in the production of tangible personal property.., for sale by manufacturing, processing "

Section 528.13 of the Sales and Use Tax Regulations states:

Machinery and equipment used in production;... -
(Tax Law S 1115 [a][12])

(a) Exemption.

(1) An exemption is allowed from the tax imposed under section 1105(a) of the Tax Law, and from the compensating use tax imposed under section 1110 of the Tax Law, for receipts from sales of:

(i) machinery or equipment used or consumed directly and predominantly in the production for sale of tangible personal property...by manufacturing, processing

* * *

(b) Production.

(1) (ii) Production includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through, the last step of production where the product is finished and packaged for sale.

Section 527.4 of the Sales and Use Tax Regulations provides as follows:

Sale of services of producing...processing (Tax Law, S 1105[c][2]).

(a) Imposition

(1) Section 1105(c)(2) of the Tax Law imposes a tax on the receipts from services of producing...processing...tangible personal property, performed for a person who directly or indirectly furnishes the property.

(2) The enumerated services are not taxable when:

- (i) purchased for resale, or
- (ii) performed on property intended for resale.

* * *

(b) Producing. Producing means the manufacture of a product from raw materials and any process in which raw material loses its identity when the production process is completed.

* * *

(d) Processing. Processing is the performance of any service on tangible personal property for the owner which effects a change in the nature, shape or form of the property.

While Petitioner terms its services "remanufacturing", an analysis of Petitioner's activities finds that Petitioner's services do not fall within the meaning of production as defined under Section 528.13(b)(1)(ii) of the Sales and Use Tax Regulations nor within the meaning of producing as defined under Section 527.4 of the Sales and Use Tax Regulations. Petitioner's services do not occur on a production line, are not an extension of the manufacturer's production process, nor do they involve the creation of a product from raw materials. Rather, Petitioner's services are simply the repairing or reconditioning of a previously manufactured unit, or part or component of a previously manufactured unit, which was sold at retail and returned due to being either damaged or defective. Moreover, Petitioner's services do not fall within the meaning of processing as defined under

Section 527.4(d) of the Sales and Use Tax Regulations as the services performed do not effect a change in the nature, shape or form of such unit, part or component.

Reconditioning is not production....Reconditioning occurs after the completion of the productive process. Matter of the Application of Sandy Hill Corporation, State Tax Commission, February 10, 1976, STH 76-9.

Section 1105(c)(3) of the Tax Law imposes sales tax on the receipts from every sale, except for resale, of the services of maintaining, servicing or repairing tangible personal property.

Section 527.5(a) (3) of the Sales and Use Tax Regulations defines maintaining, servicing and repairing as "terms used to cover all activities that relate to keeping tangible personal property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition".

Section 527.5(b)(2) of the Sales and Use Tax Regulations states:

Maintaining, servicing or repairing tangible personal property is not taxable if the property maintained, serviced or repaired is held for sale in the regular course of business.

Example 1: A repair shop charges a boat dealer for reconditioning boat motors which the dealer will resell. The reconditioning of the motors is not taxable because the motors are for resale.

Accordingly, as Petitioner's services are not considered to be the production of tangible personal property for sale, but rather, the maintaining, servicing or repairing of tangible personal property, Petitioner's purchases of equipment for use in performing such services do not qualify for the exemption provided under Section 1115(a)(12) of the Tax Law and are subject to state and local sales or use tax.

It is noted that if a manufacturer were to repair or recondition damaged or defective units, parts or components returned under its warranty, the manufacturer's purchase of equipment for predominant (more than 50%) use in making such repairs would not qualify for the exemption provided under Section 1115(a)(12) of the Tax Law, but would be subject to state and local sales or use tax.

It is also noted that inasmuch as the manufacturer is purchasing Petitioner's services for the purpose of being resold, Petitioner's charge to the manufacturer for performing such services will not be subject to state or local sales tax provided the manufacturer furnishes Petitioner a properly completed Resale Certificate, (Form ST-120).

DATED: January 17, 1989

s/FRANK J. PUCCIA
Director
Technical Services

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.